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September 9, 2019

Fox Chapel Area School District
c/o Terry L. Wirginis, Board President
611 Field Club Road
Pittsburgh, PA 15238

RE: Independent Investigation Report

Dear Mr. Wirginis:

As requested, I have conducted an independent investigation into allegations that School District records were improperly shredded to avoid disclosure under Pennsylvania's Right-to-Know Act (hereinafter referred to as the "Act"). The within Report provides a summary of the Investigation, along with my conclusions regarding this matter. Like most investigations, my recommendations are based upon the information provided to me. Unfortunately, there were a limited number of individuals who may have relevant information but were unwilling to participate in the investigation or I was unable to identify the individuals based upon the information available to me. The extent of their knowledge, if any, of the allegations is unclear. The individuals all appear to be members of the public and none of the individuals have been identified as employees of the School District. As such, the likelihood that these individuals have first-hand information relevant to the investigation is not clear to me.

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I. Initial Allegation.

The underlying allegation that School District records were improperly shredded to avoid disclosure under the Act was initially communicated to the Board President, Terry Wirginis, and the School District Solicitor, Paul Giuffre, via email from a Board member, Dr. Edie Cook, on June 19, 2019. Dr. Cook's email reads as follows:

From: edie cook <edie.cook@yahoo.com>
Sent: Wednesday, June 19, 2019, 1:36 P.M.
To: Paul Giuffre <paul@giuffrelawoffice.com>; Terry Wirginis <twirginis@gatewayclipper.com>
Subject: Please investigate this matter

Hello Paul and Terry,

I received information from a few sources that indicates that there may have been district records and RTK related documents removed from the administrative offices for shredding yesterday afternoon by the Maleski Transfer company.

I contacted Maleski to see if the information was accurate and they confirmed that they did remove documents for shredding, but that they would hold them for us. There is now the opportunity to determine if they should be lawfully destroyed. I am very concerned and would like Paul to investigate why the document destruction was ordered and ascertain whether it was appropriate. This information was also shared with the office of the auditor general. Please let me know what else should be done to address this, as it undermines the public's trust and could potentially violate the RTK law.

Thank you

Edie

A copy of Dr. Cook's email is attached to this Report at Appendix "1."

Shortly after Dr. Cook's email, the School District received via email a Right-to-Know Request from Mary Niederberger of Public Source. Ms. Niederberger's Right-to-Know Request seeks "... The official log and/or any list or description of the documents sent for shredding from the Fox Chapel Area School District administration center on Tuesday, June 18. Please see attached photo of shredding bins that were loaded onto a Weleski Transfer truck."

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A copy of Mary Niederberger's Right-to-Know Request is attached to this Report at Appendix "2."

After Dr. Cook's initial email, Solicitor Giuffre responded to Dr. Cook via two separate emails. His first email reads as follows:

On Wednesday, June 19, 2019, 3:26:08 PM EDT, Paul Giuffre
<paul@giuffrelawoffice.com> wrote:

Dr. Cook,

The district has a records retention schedule to assure that all public documents are maintained in accordance with the law. Pursuant to that schedule, records that the district is no longer required to maintain are periodically purged. If memory serves me, the district uses Weleski to shred any records being purged that might contain personal, confidential or otherwise protected information (Social Security numbers, bank accountant information, FERPA, HIPAA, etc.). My guess is that is all that was occurring yesterday.

In order to look into this please give me the names of those by whom you were made aware of this and with whom you spoke at Weleski. I would like to contact the witnesses to begin the inquiry and need to discuss with Weleski what it intends to do with the documents while the district decides what course to take. Finally, please let me know with whom you spoke at the auditor general's office. I may need to touch base with someone there also.

Thank you,

Paul

A copy of Solicitor Giuffre's email is attached to this Report at Appendix "3."

A short time later, Solicitor Giuffre sends Dr. Cook a second email which reads as follow:

On Thursday, June 20, 2019, at 12:15 PM EST, Paul Giuffre
<paul@giuffrelawoffice.com> wrote:

Dr. Cook,

I have begun looking into this matter. For an investigation to be completed it would be very important to speak with anyone who believes records were ordered destroyed that should not have been or any information on the records sent for destruction. Also, I need the name and contact information for the person at Weleski with whom you spoke.

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I will be in and out of my office today. If you cannot reach me there, please call my cell phone (412-xxx-xxxx).

Paul

A copy of Solicitor Giuffre's email is attached to this Report at Appendix "4."

The next evening, June 20, 2019, Dr. Cook emailed the entire School Board, along with Solicitor Guiffre to ask for prompt action to investigate the allegations and raises the issue of whether an independent investigation by a third party is needed. Dr. Cook's email reads as follows:

From: "edie.cook@yahoo.com" <edie.cook@yahoo.com>
Date: Thursday, June 20, 2019 at 10:14 PM
To: Terry Wirginis <twirginis@gatewayclipper.com>, Paul Giuffre <paul@giuffrelawoffice.com>, Nancy Foster <nbl@guyasuta.com>, "rm@muslaw.com" <rm@muslaw.com>, "vyas312@gmail.com" <vyas312@gmail.com>, "sandragarbisch5@gmail.com" <sandragarbisch5@gmail.com>, "erieschmidt@outlook.com" <erieschmidt@outlook.com>, Lisa Rutkowski <lisarutkowski@howardhanna.com>, "obernauer.somer@gmail.com" <obernauer.somer@gmail.com>
Subject: Re: Please investigate this matter

Dear Terry,

Given the concerns raised and the timeliness required, an appropriate method needs to be determined to verify that the documents that were sent to be shredded were all properly designated for destruction. Hopefully we can act quickly and be able to verify that all documents have been handled appropriately.

If it is found that there were documents taken away to be destroyed that do not fit under our document destruction policies and applicable laws, then the Board can make further decisions about the handling of any investigation.

In order to fulfill this obligation, the Board needs to decide whether we should arrange with our solicitor to carry out the task of verifying and reporting on this matter, or whether we should arrange for a third party to confirm compliance with our record destruction policies, retention schedule, and applicable laws. It may be prudent to have outside verification to allay any concern about mishandling by the District.

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Due to the citizen interest in this matter I feel that is it of utmost importance that we be thoughtful and transparent about how the Board carries out these actions and responds to the findings.

Again, it is my hope we can act quickly and be able to verify that all documents have been handled properly.

Sincerely,

Edie

Summary for board members not included in the original emails:

I received information that indicated that there may have been district records and RTK related documents removed from the administrative officer for shredding by the Maleski Transfer company.

After I contacted Maleski to see if the information was accurate they confirmed that they did not remove documents for shredding, but that they would hold them for us. I followed up by contacting Terry and Paul to request that appropriate measures be taken to investigate.

A copy of Dr. Cook's email is attached to this Report at Appendix "5."

After returning from vacation, Board President Wirginis informs the Board that he has retained Attorney Thomas Breth of Dillon McCandless King Coulter & Graham, LLP, to conduct an independent investigation into the shredding allegations. Board President Wirginis' email reads as follows:

On Friday, June 28, 2019, 10:48:11 AM EDT, Terry Wirginis
<twirginis@gatewayclipper.com> wrote:

Dear Follow Board Members,

As you know, there has been allegations of possible inappropriate document destruction by the district. It was decided to seek someone to investigate the circumstances that has no connection to the district. I have retained the services of Thomas Breth, Partner, Dillon McCandless King Coulter & Graham, LLP, to conduct the investigation. Tom has no conflicts and will be able to perform a thorough, unbiased investigation. Tom will be interviewing staff members and may want to interview some board members as well.

Your cooperation will be appreciated.

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Thank you

Terry Wirginis

A copy of Terry Wirginis' email is attached to this Report at Appendix "6."

II. Initial Contact with SmartEarth Shredding, a subsidiary of Weleski Transfers.

As an initial response to the allegations raised by Dr. Cook, the Board President asked Solicitor Giuffre to gather additional information for the Board. On June 19, 2019, Solicitor Giuffre contacted SmartEarth Shredding/Weleski Transfer and spoke with Mr. Justin Scisciani. Mr. Scisciani informed Solicitor Giuffre as follows:

- A man stopped by Weleski's facility, identified himself as "Arnold" and told the receptionist that he was an employee of the Fox Chapel School District.
- He indicated that some of the Fox Chapel bins contained documents that were not to be shredded.
- He asked Mr. Scisciani to hold off on shredding any of the documents.
- Mr. Scisciani told Solicitor Giuffre that the documents had not been shredded and that he would store the bins pending further instructions.

Later that same day, two telephone calls took place between Solicitor Giuffre and Mr. Scisciani. The first was initiated by Solicitor Giuffre and the second was initiated by Mr. Scisciani. During the second telephone call, Mr. Scisciani informed Solicitor Giuffre that the documents had already been shredded. In response, Solicitor Giuffre emailed Mr. Scisciani to confirm their conversations and the information provide by Mr. Scisciani. Solicitor Giuffre's email reads as follow:

On Wednesday, June 19, 2019, at 5:31 PM EST, Paul Giuffre
<paul@giuffrelawoffice.com> wrote:

Justin,

As I indicated I am the solicitor to the Fox Chapel Area School District. I am writing to follow-up on our telephone conversations regarding document bins from the Fox Chapel Area School District Administrative Offices.

To briefly summarize, your company was scheduled to pick-up and shred documents from the Fox Chapel Area School District Administrative Offices the week of June 17th.

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Consistent with normal practices involving the FCASD, you had received a call (or possibly an email) from "Liz" at the administrative offices scheduling pick-up of document bins. When we spoke, you were unsure of the date of Liz's request, but, if necessary, thought you might be able to determine that date. (At this time, I do not think it is necessary for you determine the date or manner of her contract with you but would ask that you maintain any record or note of her contact with you regarding the bins in question.)

The document bins were picked-up as scheduled but were not initially shredded. The documents were not shredded because a man, identifying himself as a representative of the district named "Arnold", appeared at your main facility and advised that the bins possibly contain documents that were not to be shredded. He directed your company to "hold off". On that basis, the documents were not shredded but were to be retained in a secure area of one of your facilities. Until my call to you, your company received no other calls or had no other discussions regarding these documents.

During our initial conversation, I indicated that the documents should not be shredded but should be securely stored until further direction from me. You indicated that you would take reasonable steps to main the confidentiality of the documents and would not permit anyone access to the documents until further instructed by me on behalf of the district. Shortly after our first conversation, you called me back to tell me that the documents in the bins in question had been shredded prior to our first conversation.

As I told you there is no one named Arnold who would have authority to view the documents, order their destruction, or direct your company to not shred the documents as you were initially instructed by the district to do. For this reason, I would appreciate any additional information your company might have regarding the individual who appeared at the main facility. If the facility at which the person appeared has surveillance or other cameras, I would ask that any depictions of "Arnold" be maintained.

Thank you,

Paul

A copy of Solicitor Giuffre's email is attached to this Report at Appendix "7."

On June 20, 2019, Solicitor Giuffre contacted and spoke with Liz Dessel. Ms. Dessel confirmed that she is usually responsible for scheduling the shredding bins to be picked up by SmartEarth Shredding; that no one directed her to schedule a pick-up for June 18, 2019; and, that when the shredding bin in the Business office is almost full, she contacts Justin Scisiani to schedule a pick-up and informs the staff. Ms. Dessel provided Solicitor Guiffre with a copy of her email to the staff which is dated June 12, 2019, along with the Document Destruction Order which shows that the shedding bins were picked up by Weleski Transfer on June 18, 2019.

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A copy of Ms. Dessel's email and the Document Destruction Order are attached to this Report at Appendix "8."

In addition to speaking with Ms. Dessel, Solicitor Giuffre spoke with Cathy Wagner, Executive Assistant - Human Resources who works with Dr. McCommons, and Kathleen Anuszek, Executive Assistant to the Superintendent and Board Secretary. Both confirmed that Ms. Dessel arranges to have the shredding bins picked up when needed. On June 26, 2019, Solicitor Giuffre summarized the above-referenced information in the form of a Memorandum to Board President Terry Wirginis.

A copy of Solicitor Giuffre's Memorandum is attached to this Report at Appendix "9."

III. Documentation from SmartEarth Shredding

By all accounts, the School District has used an outside shredding company to dispose of records for decades. When SmartEarth Shredding retrieves the shredding bins from the School District, it will over a period of time provide the School District with at least three documents related to each pick-up: a document destruction order, an invoice and a certificate of destruction. For the June 18, 2019 pick-up, SmartEarth Shredding's Document Destruction Order confirms that Ms. Dessel (Liz) is the contact person for the School District; that two (2) bins were removed from the Administration Building; and, that the service date was June 18, 2019. SmartEarth Shredding's Invoice also confirms that two (2) bins were removed from the Administration Building with a service date of June 18, 2019. Finally, SmartEarth Shredding's Certificate of Destruction confirms the job date of June 18, 2019, and, that the contents of the shredding bins were destroyed June 18, 2019.

The Certificate of Destruction is consistent with Mr. Scisiani's telephone call to Solicitor Giuffre in the late afternoon of June 19, 2019, in which he informed Solicitor Giuffre that the documents had already been shredded by SmartEarth Shredding. The Certificate is contrary to Mr. Scisiani's initial June 19, 2019, indication to Solicitor Giuffre that the documents in the shredding bins had not been shredded and would be preserved pending further direction from the School District.

Copies of SmartEarth Shredding's Invoice and Certificate of Destruction are attached to this Report at Appendix "10."

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In addition, I spoke with Mr. Scisiani on several occasions and questioned him regarding the confusion as to whether the documents had or had not been shredded as of June 19, 2019. Mr. Scisiani's explanation of the confusion and events were consistent with Solicitor Giuffre's summary as set forth in his June 19, 2019, email to Mr. Scisiani. *See Appendix "7" above.*

In addition to speaking with Mr. Scisiani, I spoke with Welski Transfer's two part-time receptionists regarding the individual who claimed to be an employee of the Fox Chapel Area School District. One receptionist, Mary Jane Thompson, identified Board Member Edith Cook's husband, Arnold, as the individual who claimed to be an employee of the School District and directed them not to shred the documents in the shredding bins.

IV. Applicable School District Policies and Procedures.

Like most Pennsylvania school districts, the Fox Chapel Area School District utilizes the Pennsylvania School Boards Association ("PSBA") policy service to assist with the drafting and implementation of School Board policies.

On May 10, 2010, the Board adopted Policy No. 800 - Records Management and Administrative Regulation 800-AR-1 - Records Retention Schedule. Policy 800 - Records Management was subsequently revised by the Board on April 13, 2015; and, Administrative Regulation 800-AR-1 was subsequently revised on January 9, 2017, and again on December 21, 2017. Policy 800 references a "Records Retention Schedule" which is to contain a list of the different types of records, the applicable retention period for each type of record and the proper method of disposal. Administrative Regulation 800-AR-1 is the Records Retention Schedule which is consistent with the requirements of Policy 800. Policy 800 and Administrative Regulation 800-AR-1 do not require the School District or its staff to maintain a "log" or other record of the documents disposed of by the School District.

Copies of Policy 800 - Records Management and Administrative Regulation 800-AR-1 - Records Retention Schedule are attached to this Report at Appendix "11."

V. Pending Right-to Know Requests as of June 18, 2019.

The School District is required to annually designate a Right-to-Know Officer. The Right-to-Know Officer for the Fox Chapel Area School District is Dr. David McCommons. When the

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School District receives a Right-to-Know Request, it is entered and tracked by Dr. McCommons' Executive Assistant, Donna Beley. If there are potential legal questions regarding a Right-to-Know request, the copy of the Request is provided to Solicitor Giuffre for his review and legal opinion. Throughout the process, Dr. McCommons, Ms. Beley and Solicitor Giuffre work to review the requests, gathers the requested public records, timely provide the required responses and, if necessary, handle any appeals to the Office of Open Records ("OOR").

Since the allegations related to the destruction of records to avoid disclosure pursuant to a Right-to-Know Request, the investigation reviewed each of the pending Right-to-Know Requests as of June 18, 2019. There were five (5) Right-to-Know Requests pending on June 18, 2019. There are listed below.

1. A Request from Lisa Rendell was received on April 16, 2019. Ms. Rendell requested information regarding testing referrals completed to determine giftedness, re-evaluation testing referrals, referrals for eligibility for specialty designed instruction such as due to learning behavior, social, emotional, or adaptive concerns for the years 2004-2018 school years. The School District granted her Request and provided a redacted record of the information. Ms. Rendell filed an Appeal with the Office of Open Records. The Appeal was pending as of June 18, 2019.
2. A Request from Mary Niederberger was received on June 17, 2019. Ms. Niederberger requested information regarding Dr. Freeman's total salary, benefits, bonuses for 2018-2019. Her request was granted by the School District.
3. A Request from Mary Niederberger was received on June 17, 2019. Ms. Niederberger requested information regarding Administrator's total salary, benefits, bonuses for 2018-2019. Her request was granted by the School District.
4. A Request from Mary Niederberger was received on June 17, 2019. Ms Niederberger requested copies of emails and replies to and from the email address, "schoolboard@fcasd.edu" from July 1, 2018, to June 17, 2019. Her request was granted in-part and denied in-part. Ms. Niederberger did not appeal the partial denied of her request.
5. A Request from Mary Niederberger was received on June 17, 2019. Ms. Niederberger requested information regarding Superintendent Gene Freeman's daily work calendar from July 1, 2018, to June 17, 2019. Her request was granted by the School District.

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Copies of above-referenced Right-to-Know Request are attached to this Report at Appendix "12-16."

In addition to reviewing the Right-to-Know Requests pending as of June 18, 2019, the investigation also reviewed the Right-to-Know Requests submitted between June 19, 2019, and August 15, 2019. There were ten (10) Right-to-Know Requests submitted in this time period. They are listed below.

1. A Request from Mary Niederberger was received on June 19, 2019. Ms. Niederberger requested information regarding the total compensation paid to Superintendent Gene Freeman from 2014-2015 to 2017-2018. Her request was granted by the School District.
2. A request from Mary Niederberger that was received on June 19, 2019. Ms. Niederberger requested information regarding the total compensation paid to Administrators from, 2014-2015 to 2107-2018. Her request was granted by the School District.
3. A Request from Mary Niederberger that was received on June 19, 2019. Ms. Niederberger requested the official log and/or list or description of the documents sent for shredding from the school district on June 18, 2019. The School District advised Ms. Neiderberger that the School District did not keep a log of the documents placed in the shredding bins so no such records existed. Ms. Niederberger filed an Appeal with the Office of Open Records. The Appeal is currently pending with the Office of Open Records.
4. A Request from Mary Niederberger that was received on June 21, 2019. Ms. Niederberger requested the Fox Chapel Area School District's Record Retention Policy and Schedule. Her request was granted by the School District.
5. A Request from Mary Niederberger that was received on June 25, 2019. Ms. Niederberger requested information regarding the Fox Chapel Crew Team Appropriation. Her request was granted by the School District.
6. A Request from Mary Niederberger that was received on July 10, 2019. Ms. Niederberger requested Superintendent Gene Freeman's current contract. Her request was granted by the School District.
7. A Request from Mary Niederberger that was received on July 16, 2019. Ms. Niederberger requested statements of financial interest for all school employees. Her request was granted by the School District.

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8. A Request from Mary Niederberger that was received on August 5, 2019. Ms. Niederberger requested information regarding Superintendent Gene Freeman's sick days, vacation days, and limited leave days. The School District's response is due by September 11, 2019.
9. A Request from Mary Niederberger that was received on August 14, 2019. Ms. Niederberger requested information regarding Superintendent Gene Freeman's total compensation for 2019-2020. Her request was granted by the School District.
10. A Request from Mary Niederberger was received on August 14, 2019. Ms. Niederberger requested information regarding Administrator's salaries for 2019-2020. Her request was granted by the School District.

Copies of above-referenced Right-to-Know Request are attached to this Report at Appendix "17-26."

As of September 9, 2019, of the above-referenced Right-to-Know Requests, there are only three (3) Requests outstanding. They are list below.

1. A Request from Lisa Rendell was received on April 16, 2019. Ms. Rendell requested information regarding testing referrals completed to determine giftedness, re-evaluation testing referrals, referrals for eligibility for specialty designed instruction such as due to learning behavior, social, emotional, or adaptive concerns for the years 2004-2018 school years. The School District granted her Request and provided a redacted record of the information. Ms. Rendell filed an Appeal with the Office of Open Records. The Appeal was pending as of June 18, 2019.
2. A Request from Mary Niederberger that was received on June 19, 2019. Ms. Niederberger requested the official log and/or list or description of the documents sent for shredding from the school district on June 18, 2019. The School District advised Ms. Neiderberger that the School District did not keep a log of the documents placed in the shredding bins so no such records existed. Ms. Niederberger filed an Appeal with the Office of Open Records. The Appeal is currently pending with the Office of Open Records.
3. A Request from Mary Niederberger that was received on August 5, 2019. Ms. Niederberger requested information regarding Superintendent Gene Freeman's sick days, vacation days, and limited leave days. The School District's response is due by September 11, 2019.

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Copies of Right-to-Know Request chart is attached to this Report at Appendix "27."

VI. School District Employees Interviewed.

The individuals listed below were interviewed as part of the investigation.

1. Dr. David McCommons - Deputy Superintendent and Right-to-Know Officer
2. Donna Beley – Executive Assistant to Dr. McCommons
3. Kathleen Anuszek – Executive Assistant to Dr. Freeman and Board Secretary
4. Cathy Wagner – Executive Assistant, Human Resources
5. Janet Byrnes – Information Management Specialist, Testing Coordinator
6. Shari Hudak – Payroll/Accounting Specialist - Business Office
7. Elisa Vagnozzi – Accounts Payable Secretary - Business Office
8. Michelle Wilhere – Benefits Secretary - Business Office
9. Dr. Gene Freeman, Superintendent of Schools
10. Paul Giuffre, Esquire, Solicitor

VII. Internal Email Search.

As part of the investigation, Dr. McCommons was asked to direct the search of the School District email server for all emails containing any of the terms "shred," "shredding," or "shredded" along with any variation thereof. All of the emails generated by the search were reviewed. None of the emails, other than the emails previously identified in Section 1 above, contained information relevant to the investigations. Most of the email were reminder emails related to the Records Retention Schedule.

VIII. Review of Employment Contracts, Compensation Plans, Annual Salary Adjustments and Stipends.

In addition to trying to determine whether records were inappropriately shredded to avoid disclosure under the Right-to-Know Act, the investigation also tried to determine why someone would want and/or need to shred records and how the shredding of the records would eliminate the availability of the information. The working assumption was that the alleged records must have contained evidence of financial malfeasance which answers the why question. However,

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records related to the School District's financial operations are stored in various electronic and hard-copy formats for audit so shredding of hard-copies does little to the disclosure of the information.

Nonetheless, the School District was asked whether any of the administrators received mid-year salary adjustments and/or additional compensation beyond what was contained within their Employment Contract or Compensation Plan for the 2018-2019 school year. In response to the request, the School District produced Memorandums detailing seven (7) times an administrator received a mid-year salary adjustment or stipend during the 2018-2019 school year. The Memorandums were from the Superintendent to the Business Manager with Ms. Shari Hudak receiving a copy. The Memorandums contain an explanation of the basis for the additional compensation along with the amount of the additional compensation.

Copies of the Memorandums are attached to this Report at Appendix "28."

IX. Conclusions.

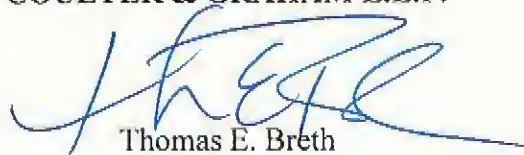
1. The investigation was unable to identify a single witness or any evidence to support the allegation that School District records were improperly shredded to avoid disclosure under Pennsylvania's Right-to-Know Act.
2. Dr. Edith Cook, who communicated the allegation to the Board President, Mr. Terry Wirginis, and the Solicitor, Paul Giuffre, has consistently refused to provide additional information regarding the allegations or assist with the investigation in any manner.
3. The School District employees who were interviewed as part of the investigation were competently able to discuss their job responsibilities including, but not limited to, their obligations under Policy 800 - Records Management and Administrative Regulation 800-AR-1 - Records Retention Schedule. The employees fully cooperated with the investigations and conducted themselves in a professional and respectful manner.

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4. Due to the serious nature of the allegations, this investigation needed to be conducted by the School District. However, this entire situation could have been avoided, if questions would have been asked before reckless allegations were made impugning the honesty and integrity of School District employees.

Very truly yours,

**DILLON McCANDLESS KING
COULTER & GRAHAM L.L.P.**



Thomas E. Breth